COMMISSION DETERMINATION RE BARCLAY CIGARETTES; AMENDMENT OF REPORT OF "TAR", NICOTINE AND CARBON MONOXIDE CONTENT OF 208 VARIETIES OF CIGARETTES; REQUEST FOR COMMENT ON POSSIBLE TESTING MODIFICATIONS

AGENCY: Federal Trade Commission.

ACTION: Announcement of Commission Determination, Amendment of Past Report, and Request for Comment on Possible Testing Modifications.

SUMMARY: This document announces the Commission's determination that the present FTC testing methodology does not assess accurately Barclay cigarettes and requests comment on possible testing modifications. In accordance with this determination the Commission is amending its March, 1983 Report of "Tar", Nicotine and Carbon Monoxide of the Smoke of 208 Varieties of Cigarettes, 48 Fed. Reg. 13268.

FOR FURTHER INFORMATION CONTACT: Judith P. Wilkenfeld, Federal Trade Commission, Bureau of Consumer Protection, (202) 724-1499, Washington, D.C. 20580.

COMMENTS: Comments should be filed in Room 130, Federal Trade Commission, 6th & Pennsylvania Avenue, N.W., Washington,

D.C. 20580, no later than June 30, 1983.

SUPPLEMENTAL INFORMATION: In June, 1981 the Federal Trade Commission initiated an inquiry to examine allegations that its current "tar", nicotine, and carbon monoxide testing methodology, with the specifications as set forth in the Commission's announcements of July 31, 1967, 32 Fed. Reg. 11178, and January 18, 1979, 44 Fed. Reg. 3777, does not assess accurately Barclay cigarettes.

The Commission's inquiry has been assisted by extensive comments and scientific studies submitted by Lorillard, R.J. Reynolds and Philip Morris, as well as Brown and Williamson, the manufacturer of Barclay cigarettes. The Commission also utilized three independent consultants to review the information submitted by these companies and make recommendations to the Commission and its staff. The consultants' reports were subsequently circulated to the companies for further comment.

Based on the information developed during the inquiry, the Commission has determined that its present testing methodology for "tar", nicotine, and carbon monoxide does not measure accurately Barclay cigarettes. The Commission has therefore determined it will not accept test results based on the current FTC method as substantiation for claims made about the "tar", nicotine, and carbon monoxide conten of all varieties of Barclay cigarettes.

Without a new testing methodology, precise statements as to the appropriate "tar", nicotine, and carbon monoxide rankings for Barclay cigrettes are not possible. Independent estimates by the Commission's consultants for Barclay 80's and 85's, which are ranked by the present method as 1 mg. "tar" cigarettes, range from 3 to 7 mg. "tar." Similarly, the relative delivery of nicotine and carbon monoxide of these products is greater than suggested by the present FTC tests.

The Commission is therefore amending its March, 1983 Report of "Tar", Nicotine and Carbon Monoxide of the Smoke of 208 Varieties of Cigarettes, 48 Fed. Reg. 13268, by appending copies of this Notice to the Report. By this action, the Commission does not mean to imply that Brown and Williamson, the manufacturer of Barclay cigarettes, has violated any provision of the Federal Trade Commission Act for its past use and reliance on the FTC method to assess "tar", nicotine, and carbon monoxide levels. Unless and until the Commission adopts a new testing methodology that is able to measure Barclay cigarettes accurately, however, future reports will not include test results for these cigarettes.

The Commission has further determined that there is a significant likelihood that the current testing method does not

assess accurately Brown and Williamson's Kool Ultra and Kool Ultra 100's each of which uses the Actron filter design used in Barclay cigrettes. The Commission is today requesting comment on the following limited issues: (1) Are Kool Ultra and Kool Ultra 100's assessed accurately by the current FTC method? (2) If not, how should these products be assessed?

The Commission wishes to reiterate that its "tar", nicotine, and carbon monoxide data are for comparative purposes only. How much "tar", nicotine, and carbon monoxide a particular cigarette delivers depends on the way it is smoked. "Tar", nicotine, and carbon monoxide delivery per cigarette will increase if the cigarette is inhaled more deeply, or puffed more frequently, by the smoker. If consumers who switch to lower yield cigarettes change their smoking pattern, for example, by smoking more cigarettes per day, they may receive a greater yield than suggested by the FTC test results.

All ventilated filter cigarettes pose a special problem. Many "lower tar" cigarettes achieve lower yields in part by use of a ventilated filter. Perforated holes or vents on the filter allow air to mix with the smoke during puffing, thus diluting the smoke and decreasing the yield. If the holes or vents are blocked, however, delivery will increase. Consumers will only achieve the relative "tar", nicotine, and carbon monoxide yields suggested by FTC tests for ventilated filter cigarettes if they avoid blocking the holes or vents on the filter with their lips

or fingers while smoking the cigarettes.

If consumers avoid blocking ventilation holes, cigarettes smoked in the same fashion will yield "tar", nicotine, and carbon monoxide in general accordance with their relative FTC rankings. The Barclay filter, however, poses a unique problem. Reduced ventilation when smoking Barclay apparently occurs inevitably and cannot be avoided by informed consumers except by use of a cigarette holder. Therefore, the Commission is taking this action to correct the "tar", nicotine, and carbon monoxide figures for Barclay cigarettes previously disclosed in the FTC's 1983 Report.

Based on the evidence obtained in this inquiry, the Commission decided in June 1982 to solicit comments on proposals to modify its testing machine so that the relative yields of all cigarettes, including Barclay, may be assessed accurately. The Commission prepared a statement that shows how it determined that it needed to explore possible testing modifications. The Commission's statement and the underlying evidence are now under seal by a court order. Several members of the cigarette industry who participated in the investigation had access to the evidence prior to the imposition of the seal. The statement and the evidence, if available, would be helpful to those parties who did not participate in the investigation in preparing informed comment in response to this notice. The Commission does not know whether or when the

court order sealing the evidence will be lifted. Therefore, to avoid further delay, the Commission has decided to seek public comment now rather than waiting to see if the seal will be lifted.

The Commission is seeking comments on each of the following proposed holders for its testing machine:

(A) The MK II "Filtrona" holder, manufactured by Cigarette Components Ltd. of London and sold in the United States by American Filtrona Corp., Richmond, Virginia. This holder increases the pressure on the filter, thereby reducing air flow through the channels on the Barclay-type filter.

(B) A modified version of the Cambridge holder currently used on the machine, containing a ring of foam rubber so as to abut the mouth end of the cigarette and block the exit channels on the Barclay-type filter.

(C) A cigarette holder designed so that one or more of the ventilation channels on the Barclay filter are blocked.

Each of these holders is intended to simulate the reduction in ventilation that occurs when humans smoke Barclay. The Commission has not yet determined whether any of these modifications are technically feasible and practicable, or whether some other modification will insure that all cigarettes, including Barclay, can be ranked accurately.

The Commission also is requesting comments on the following specific questions and any other issues relevant to possible modifications of its testing methodology given the Commission's determinations regarding Barclay:

(1) Which of the proposed modifications, or what other modification, would yield the most appropriate test results for all cigarettes, given the Commission's finding in this matter and the consultants' estimates of Barclay's tar delivery?

(2) How quickly and easily, and at what cost, could the Commission implement each of the proposed modifications, or any other proposed modifications?

(3) Regarding proposal (C), which would more appropriately rank Barclay cigrettes -- for example, a holder blocking two channels or one blocking three channels?

(4) Does the current FTC method accurately assess the relative "tar", nicotine, and carbon monoxide of Kool Ultra and Kool Ultra 100's each of which utilizes the Actron filter utilized in Barclay? If not, how should these products be assessed?

(5) Given the Commission's findings, what action other than modification of the testing methodology, if any, is appropriate?

(6) Would there be unintended consequences from modifying the cigarette testing method and/or machine? What effect might modification have upon possible innovation in the cigarette design?

(7) Should the Commission further examine the implications for its testing program of the issues raised by compensatory smoking behavior, including hole blocking, when consumers smoke lower "tar" cigarettes? What is the evidence that smokers use higher "tar" cigarettes differently than lower "tar" cigarettes? What is the evidence regarding the extent of hole blocking by smokers of different ventilated filter cigarettes? How does behaviorally reduced air dilution affect the relative rankings of various brands? Are there problems regarding compensatory smoking behavior which are significant enough to warrant further exploration of changes in the method, beyond those necessitated by the Commission's findings concerning Barclay? What lines of inquiry would generate the most useful information if such an examination is undertaken? For example, should the Commission explore a system of categories or "bands" of "tar" content rather than specific numerical estimates? Also, should consumers be advised that the cigarettes' actual "tar" delivery depends on how it is smoked?

In addition to responses to these questions, the Commission will carefully consider any additional research, such as studies

of blood cotinine in smokers and air dilution in ventilated filter cigarettes, or other relevant information bearing on the appropriate relative rankings of these products.

By direction of the Commission.

Benjamin I. Berman
Acting Secretary